

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KYLE ROBERT JAMES,

Plaintiff,

v.

BARBARA LEE, et al.,

Defendants.

Case No.: 16-cv-01592-AJB (JLB),
consolidated with 17-cv-00859-AJB
(MDD)

ORDER:

**(1) ADOPTING THE REPORT
AND RECOMMENDATION (Doc.
No. 159); AND**

**(2) GRANTING DEFENDANT'S
MOTION TO DISMISS, (Doc. No.
144)**

Presently before the Court is Defendant Mark Kania's ("Defendant") motion to dismiss the Fifth Amended Complaint. (Doc. No. 144.) The Court referred this matter to Magistrate Judge Jill L. Burkhardt for a Report and Recommendation (the "R&R"), which was issued on August 1, 2020. (Doc. No. 159.) The R&R recommends that the Court: (1) grant in part and deny in part Defendant's motion to dismiss; (2) grant Defendant's motion to dismiss Plaintiff's claims against Defendant in his official capacity; (3) grant Defendant's motion to dismiss Plaintiff's deliberate indifference to serious medical needs claim on the ground that Defendant is entitled to qualified immunity; and (4) deny Defendant's motion to dismiss Plaintiff's excessive force claim and Fourteenth


1 Amendment claims for violation of bodily privacy and his right to be free from punishment.
 2 (*Id.* at 29.) The parties were instructed to file written objections to the R&R by August 21,
 3 2020, and a reply to the objections no later than September 4, 2020. (*Id.*)

4 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
 5 judge's duties in connection with a magistrate judge's R&R. The district judge must "make
 6 a de novo determination of those portions of the report . . . to which objection is made[.]"
 7 and "may accept, reject, or modify, in whole or in part, the findings or recommendations
 8 made by the magistrate judge." 28 U.S.C. § 636(b)(1); *United States v. Remsing*, 874 F.2d
 9 614, 617 (9th Cir. 1989). However, in the absence of objection(s), the Court "need only
 10 satisfy itself that there is no clear error on the face of the record in order to accept the
 11 recommendation." Fed. R. Civ. P. 72(b) advisory committee note to the 1983 amendment;
 12 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

13 Neither party has filed objections to the R&R. Thus, having reviewed the R&R, the
 14 Court finds it thorough, well-reasoned, and contains no clear error. Accordingly, the Court
 15 hereby: (1) **ADOPTS** the R&R; (2) **GRANTS** Defendant's motion to dismiss Plaintiff's
 16 claims against Defendant in his official capacity; (3) **GRANT** Defendant's motion
 17 to dismiss Plaintiff's deliberate indifference to serious medical needs claim on the ground
 18 that Defendant is entitled to qualified immunity; and (4) **DENY** Defendant's motion to
 19 dismiss Plaintiff's excessive force claim and Fourteenth Amendment claims for violation
 20 of bodily privacy and his right to be free from punishment. (Doc. No. 159.)

21
 22 **IT IS SO ORDERED.**

23 Dated: September 11, 2020

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 25 Hon. Anthony J. Battaglia
 26 United States District Judge
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